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**FACSIMILE TRANSMITTAL SHEET AND
CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8****TO: Examiner J. R. Hardee - United States Patent and Trademark Office****Fax No. 703-872-9310****Phone No. 703-305-5599**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on May 30, 2003, to the above-identified facsimile number.

 (Signature)**FROM: Jason J. Camp, Esq.****Fax No. 513-627-8118****Phone No. 513-627-8150**

Listed below are the item(s) being submitted with this Certificate of Transmission:**

- 1) Transmittal Cover Sheet (In duplicate)
- 2) Fee Transmittal Sheet (In duplicate)
- 3) Election with Traverse (3 pgs.)

Inventor(s): D. S. Caswell et al.**S.N.: 09/852,940****Filed: May 10, 2001****Case: 8082M****Number of Pages Including this Page: 8****Comments:****OFFICIAL PAPERS**

****Note:** Each paper must have its own certificate of transmission, OR this certificate must identify each submitted paper.

Case Docket No. 8082M

COMMISSIONER FOR PATENTS
P. O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited via
facsimile to: Commissioner for Patents, P. O. Box 1450,
Alexandria, VA 22313-1450, on May 29, 2003.

Jason J. Camp, 44,582
Name of Attorney/Agent Registration No.

Dear Sir:

Transmitted herewith is an ELECTION WITH TRAVERSE for the patent application:

Inventor(s): D. S. Caswell et al.

Serial No.: 09/852,940

Group Art Unit: 1751

Date Filed: May 10, 2001

Examiner: J. R. Hardee

Title: Highly Concentrated Fabric Softener Compositions and Articles Containing Such Compositions

1. ☐ No additional fee is known to be required.
2. ☐ The fee has been calculated as shown below:

	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA*	RATE	FEE
TOTAL		MINUS		=	x \$18 =	\$
INDEP.		MINUS		=	x \$80 =	\$
FIRST PRESENTATION OF MULTIPLE DEP. CLAIM					+ \$270 =	\$
TOTAL						\$

3. [x] The Commissioner is hereby petitioned under 37 CFR §1.136(a) to grant any extension of time needed for timely response to the Office Action dated March 31, 2003 in the above-identified application to preserve pendency of said application. The processing fee under 37 CFR §1.17 has been determined as follows: \$110.00 for a one month extension of time.
4. The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 16-2480. A duplicate copy of this sheet is attached.
- a. [x] Any patent application processing fees under 37 CFR §1.16.
b. [x] Any patent application processing fees under 37 CFR §1.17.
5. The Commissioner is hereby authorized to make any additional copies of this sheet needed to accomplish the purposes provided for herein and to charge any fee for such copies to Deposit Account No. 16-2480.

06/10/2003 MTAYLOR 06000009 162480 09852940

01 FC:1251 110.00 CH

Jason J. Camp
Attorney for Applicant(s)
Registration No. 44,582
Tel. No. (513) 627-8150

May 30, 2003
Customer No. 27752
K:UJC218082MTR8082MElection:LSP

5/10/03



FEE TRANSMITTAL for FY 2003 Patent fees are subject to annual revision.	Complete if Known	
	Application Number	09/852,940
	Confirmation Number	5827
	Filing Date	May 10, 2001
	First Named Inventor	D. S. Caswell et al.
	Examiner Name	J. R. Hardee
	Group/Art Unit	1751
TOTAL AMOUNT OF PAYMENT (\$) 110.00		Attorney Docket No. 8082M

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METHOD OF PAYMENT (check one)		FEE CALCULATION (continued)																																																																																																																																																																																																																	
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SUBMITTED BY		Complete (if applicable)	
Name (Print/Type)	Jason J. Camp	Registration No.	44,582
Signature		Telephone	(513) 627-8150
		Date	May 30, 2003

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Jesuo J. Camp 44,582
Name of Attorney Registration No.
Signature *JJC*

Case 8082M
*6-6-03***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In the Application of :
D. S. CASWELL ET AL. :
Serial No. 09/852,940 : Group Art Unit 1751
Filed May 10, 2001 : Examiner J. Hardee
Confirmation No. 5827 :
For CONCENTRATED FABRIC SOFTENER
COMPOSITIONS AND ARTICLES CONTAINING
SUCH COMPOSITIONS

ELECTION WITH TRAVERSE

Commissioner for Patents

Washington, D.C. 20231

Dear Sir:

In response to the Office Action dated March 31, 2003 (Paper No. 6), please consider the accompanying remarks. The Commissioner is hereby authorized to charge any necessary fees, which Applicant believes to be \$110.00 for a one-month extension of time, to Deposit Account No. 16-2480.

REMARKS

Claims 1-64 are in the application.

Restriction Requirement

The Office Action alleges that Claims 1-64 are generic to a plurality of disclosed patentably distinct species comprising fabric softening compositions and methods of using the same. The Office Action has required restriction under 35 U.S.C. § 121 to elect a single disclosed species of fabric softening composition, as in example, even though this requirement is traversed. The Office Action states that one method commensurate in scope with the elected composition will be searched and examined as well.

In accordance with the restriction requirement, Applicants' elect the fabric softening composition of Example 10 on page 70, with traverse. Applicants traverse the present restriction requirement based on the following remarks.

Paramount to issuing a restriction requirement, the Manual of Patent Examining Procedure ("MPEP") describes the criteria for restriction as follows:

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- (A) The inventions must be independent or distinct as claimed; and
- (B) There must be a serious burden on the examiner if restriction is required.

MPEP § 803 (8th ed. 2003) (citations omitted). Furthermore, the MPEP requires that "Examiners must provide reasons and/or examples to support conclusions, but need not cite documents to support the requirement in most cases." MPEP § 803 (8th ed. 2003). Indeed, an Examiner must clearly provide reasons and/or examples to support how the claims define inventions that are independent or distinct, and further to show how there is a serious burden on the Examiner. The present Office Action provides no reasoning or examples of how Claims 1-64 define inventions that are independent or distinct, and no reasoning or examples to show how there is a serious burden on the Examiner to perform a search. Rather, the Office Action simply states that Claims 1-64 are generic to a plurality of patentably distinct species comprising fabric softening compositions and methods of using the same. There is no discussion as to how the species are distinct. Since the Office Action provides no reasoning or examples as to how the inventions are allegedly distinct, this restriction requirement is improper.

Even if the claims in an application contain inventions that are independent or distinct, a proper restriction also requires that there be a serious burden on the Examiner. See MPEP § 803(B) (8th ed. 2003). As the MPEP explains:

For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant.

MPEP § 803 (8th ed. 2003). Here, the Office Action does not provide the appropriate reasoning to support a *prima facie* case that a serious burden exists. Indeed, there is no discussion whatsoever as to the extent of the burden on the Examiner to perform the search. Since a serious burden on the Examiner has not been *prima facie* shown, the present restriction requirement is improper.

Based on the above remarks, reconsideration and withdrawal of the restriction requirement is respectfully requested. If, upon reconsideration, this restriction requirement is made final, Applicants respectfully request the next Office Action contain Form Paragraph 8.05 as suggested in MPEP § 821.01 (7th ed. 1998), to show that Applicants have traversed the requirement and have retained the right to petition from the requirement under 37 C.F.R. § 1.144.

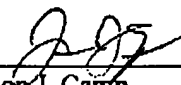
CONCLUSION

In view of the foregoing remarks, reconsideration of the application, withdrawal of the restriction requirement, and allowance of all claims are respectfully requested.

Respectfully submitted,

D. S. CASWELL ET AL.

By


Jason J. Camp

Attorney for Applicant(s)

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